Supreme Court, U.S.
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No. 95-949

In the Supreme Court of the United States

OCTOBER TERM, 1995

TEAMSTERS LOCAL 115, ETC., ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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25 pp

QUESTIONS PRESENTED

The court of appeals, adopting the report and recommendation of the Special Master, adjudged petitioners to be in civil contempt for having violated the court's earlier judgment enforcing an order of the National Labor Relations Board. To guard against further violations of the judgment or the contempt adjudication, the court, among other things, prescribed, subject to the requirements of due process, prospective fines against petitioners for any future violations of the judgment or the contempt adjudication. The questions presented are:

1. Whether the Special Master erred in denying petitioners' motion to compel the pre-trial disclosure of the Board's witness affidavits and its investigative notes and summaries of witness interviews.

2. Whether the Special Master properly applied principles of agency law in finding that petitioners were responsible for the wrongful acts committed.

3. Whether the court of appeals' prescription of prospective fines for future violations of the court's judgment or its contempt adjudication rendered the contempt proceeding criminal in nature.

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v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The order of the court of appeals (Pet. App. 6-7), adopting the Special Master's report and recommendation that petitioners be held in civil contempt for violating the court's judgment of June 19, 1986, is unpublished, as is the court's subsequently entered contempt adjudication and purgation order. Pet. App. 1-5. The unpublished report and recommendation of the Special Master is set forth at Pet. App. 8-62.

JURISDICTION

The court of appeals' contempt adjudication and purgation order was entered on July 20, 1995. The court of appeals denied a petition for rehearing on August 31, 1995. Pet. App. 72. The petition for a writ of certiorari was filed on November 29, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On June 19, 1986, the court of appeals entered a judgment against Teamsters Local 115 (Union), enforcing a determination by the National Labor Relations Board (Board) that the Union had violated Section 8(b)(1)(A) of the National Labor Relations Act (NLRA), 29 U.S.C. 158(b)(1)(A), by committing numerous acts of violence and coercion against employees and company officials of Gross Metal Products, Inc., by threatening and assaulting employees of neutral employers, and by damaging property. Pet. App. 63-65, 71. Based on the "widespread and massive" character of the Union's violations, the Union's "established proclivity for such unlawful actions and the fact that the violence and threats here went beyond the [Charging Party's] employees and were directed at neutral employers and employees as well," the Board issued a broad order, requiring among other things that the Union, its officers, agents, and representatives cease and desist from:

> (a) Restraining or coercing employees of Gross Metal Products, Inc. *or any other employer* by (1) obstructing, blocking, and preventing ingress and egress of vehicles, employees and other persons from the premises of Gross Metal

> Products *or of any other employer*; (2) threatening employees or other individuals with violence or other reprisals; (3) assaulting or striking employees or other individuals or throwing or brandishing objects at them; (4) causing damage to vehicles or other property; (5) mass picketing, pushing, shoving, chasing, or spitting at employees or other individuals—because employees or other individuals have crossed or attempted to cross Respondent's picket lines.
>
> (b) *In any other manner* restraining or coercing employees of Gross Metal Products, Inc. *or any other employer* in violation of Section 8(b)(1)(A) of the Act.

Teamsters Local 115 (Gross Metal), 275 N.L.R.B. 1547, 1557 (1985) (emphasis added) (Pet. App. 9 n. 2). In its 1986 opinion enforcing the Board's order, the court of appeals stated that "the NLRB's [broad cease and desist order] must rest upon either a historical proclivity to violate the Act or an egregious pattern of recent conduct. The facts here evince both." Pet. App. 68-69 (citations omitted).

2. On May 4, 1993, the Board filed a petition with the court of appeals requesting that the petitioners be adjudged in civil contempt for engaging in conduct proscribed by the court of appeals' 1986 judgment. Pet. App. 10. By an order of reference dated November 22, 1993, the court of appeals appointed United States Magistrate Judge Tullio Leomporra to serve as a Special Master in this matter, providing specifically that he was to conduct proceedings

"[i]n accordance with the Federal Rules of Civil Procedure."[1]

On February 23, 1994, the Board filed its First Interrogatories and Request for Production of Documents "[p]ursuant to Rule[s] 34 [and 33] of the Federal Rules of Civil Procedure." See Petitioner National Labor Relations Board's First Request for Production of Documents at 1 (Feb. 23, 1994). In response, petitioners stated that they would provide the information in accordance with the self-executing discovery requirements of the Civil Justice Expense and Delay Reduction Plan of the Eastern District of Pennsylvania (Plan).[2] Petitioners' response acknowledged that "either side obviously has the right to file additional discovery requests after this exchange of information." Letter from Walt De Treux, Counsel for Teamsters Local 115, to Mascioli (Feb. 24, 1994).

On March 24, 1994, the Board sent petitioners its First Disclosure Statement, listing the names and last known addresses of all persons known to the Board who were likely to have information bearing on

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[1] The court's order of reference is set forth in the appendix, *infra*, 3a-5a.

[2] The Plan requires, in pertinent part, that all parties shall disclose:

§ 4:01 (A) the name and last known address of each person reasonably likely to have information that bears significantly on the claims and defenses, identifying the subjects of the information;

(B) a general description, including location, of all documents, data, compilations, and tangible things in the possession, custody, or control of that party that are likely to bear significantly on the claims and defenses.

the Board's allegations, identifying the specific labor dispute of which each was likely to have relevant knowledge. The Statement also disclosed the existence of affidavits taken by the Board, and of videotapes and incident reports—some of which were not in the Board's custody—that had been prepared by the charging parties or by their agents. See Petitioner National Labor Relations Board's First Pretrial Disclosure Statement at 1-6 (Mar. 24, 1994); see also Letter from William Mascioli, Trial Attorney, to Brainard and De Treux (Mar. 24, 1994) (undertaking to supply any additional responsive information "as we obtain it").

On April 12, 1994, in what was to be their sole request for discovery from the Board, petitioners sought all affidavits, correspondence, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, and transcripts or summaries of investigations regarding each "witness" listed on the Board's disclosure statement.[3] Petitioners also sought any videotapes, audiotapes, or documentary evidence that the Board expected to present in support of its allegations. See Respondents' First Request for Production of Documents at 1-2 (Apr. 12, 1994). In response, the Board, on April 14, 1994, provided to petitioners all incident reports and photographs in its possession regarding the contempt allegations, and notified

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[3] The Plan does not require the voluntary disclosure of a witness list, and the Board's Statement was not such a list, contrary to petitioner's characterization of it (Pet. 3). Instead, the Statement complied with the Plan by identifying all individuals who were likely to have pertinent knowledge, regardless of whether the Board intended to call them to testify.

petitioners that it was in the process of duplicating all pertinent videotapes in its possession.[4] With regard to petitioners' request for affidavits and investigative notes and summaries, the Board stated that it would produce affidavits in accordance with its administrative practice, which mirrors the Jencks Act, 18 U.S.C. 3500,[5] but that it intended to assert work-product and other privileges as to the rest. See Letter from William Mascioli, Trial Attorney, to Brainard and De Treux at 1 (Apr. 14, 1994).

On April 22, 1994, petitioners moved the Special Master to compel the production of the Board's witness affidavits and investigative notes and summaries. The Special Master denied petitioners' motion to compel. In accordance with its April 14, 1994, representation that it would follow its administrative practice, the Board subsequently provided petitioners with copies of witnesses' affidavits after each witness testified on direct examination. Pet. App. 60.

On May 17, 1994, after the completion of four days of testimony, petitioners moved the court of appeals to stay the proceedings and to instruct the Special Master to continue the proceedings to permit them more time in which to engage in discovery. Pet. App. 11. The court denied petitioners' motion on May 18,

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[4] The Board provided the videotapes as soon as they were duplicated.

[5] Section 102.118(b)(1) of the NLRB Rules & Regulations, 29 C.F.R. 102.118(b)(1), provides that, after a witness has been called by the Board's General Counsel or by the charging party in an administrative hearing, the administrative law judge shall, upon the respondent's motion, order the production of any statement of the witness in the General Counsel's possession that relates to the subject matter of the witness's testimony.

1994. *Id.* at 74-75. On July 13, 1994, petitioners filed a motion with the court of appeals to dismiss the case on the ground that the Court's decision in *International Union* v. *Bagwell*, 114 S. Ct. 2552 (1994), invalidated the Special Master's proceedings. On September 2, 1994, the court denied the motion to dismiss. Pet. App. 76.

3. On October 12, 1994, the Special Master issued his report and recommendation that the Board's petition to adjudicate petitioners in civil contempt be granted. The Special Master found that "[t]he evidence is overwhelming that the Union engaged in a pattern of behavior that could hardly be classified as a 'technical or inadvertent violation.'" Pet. App. 61. Addressing petitioners' procedural defense that they had been deprived of due process by his refusal to enlarge the time for discovery, the Special Master found:

> The Union had adequate time to engage in discovery before the hearings commenced, but chose not to conduct any discovery. Instead, they asked the Special Master to order the Petitioner [Board] to produce witness statements made to Board investigators. When their motion to compel was denied they then motioned the Third Circuit to instruct the Special Master to allow more time for discovery. When this motion was denied they finally began issuing subpoenas, a year after the original contempt motion was filed and five months after the Special Master ordered discovery to continue.

Pet. App. 60.

With regard to petitioners' claim that the Union could not be held liable for the misconduct of its

members, the Special Master found that, although there was no proof of Union authorization of the misconduct, "it was a continuing pattern of misconduct * * * which the Union did not take any steps to prevent." Pet. App. 51, 54, 55-56, 57, 58. Accordingly, the Special Master found the Board had established agency under the common law principles operative under the NLRA. The Special Master also found that because of the Union's constant supervision of the picket lines, the court could infer actual knowledge after the fact, establishing liability under the "knowing tolerance" standard of *United Mine Workers* v. *Gibbs*, 383 U.S. 715 (1966). Pet. App. 51-52, 54, 55-56, 57, 58.

4. On January 13, 1995, the court of appeals issued its order adopting the Special Master's report and recommendation that petitioners be held in civil contempt for violating the Court's June 19, 1986 judgment. Pet. App. 6. On July 20, 1995, following briefing on the issue of appropriate sanctions, the court of appeals issued its contempt adjudication. Pet. App. 1.

In its purgation order, the court of appeals provided, among other things, that:

> In order to assure against further violations of the judgment of this contempt adjudication, the Court hereby imposes, subject to the requirements of due process of law, a prospective noncompliance fine of $10,000 against Local 115 for each and every future violation of the judgment or this adjudication, and a further fine of $1,000 per day for each day the Court finds such violation to have continued; and imposes a prospective fine of $1,000 per violation and $500 per day against each

officer, agent, attorney, representative or any other person who, with notice or knowledge of the judgment or this contempt adjudication, acts in concert or participation with Local 115 to violate the judgment or this adjudication.

Pet. App. 4-5.

ARGUMENT

1. Petitioners contend (Pet. 8-9) that the Board "succeeded in claiming that it is not bound by the Federal Rules of Civil Procedure" in the contempt proceedings. Far from asserting such a claim, the Board, as shown above, complied with the Federal Rules of Civil Procedure, including those pertaining to discovery, and with the local rules of the Eastern District of Pennsylvania from the time the order of reference issued establishing their applicability to this proceeding.[6] As the Special Master correctly

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[6] Petitioners contend that "this Court has not specifically addressed whether the discovery provisions of the Federal Rules of Civil Procedure apply to injunctive and/or contempt proceedings brought by the National Labor Relations Board in the federal courts." Pet. 8 (footnote omitted). This assertion fails to note that the Board litigates injunction and contempt proceedings in both the federal district courts and the courts of appeals. The Federal Rules, however, apply only in the district courts. Fed. R. Civ. P. 1. Thus, petitioners' reliance (Pet. 8) on cases involving injunction proceedings in the district courts pursuant to 29 U.S.C. 160(j) and (*l*) is misplaced, inasmuch as those are, by statute, district court proceedings. In contrast, where as here an appellate court has enforced a Board order under 29 U.S.C. 160(e), proceedings involving contempt of such an order arise in the court of appeals. For that reason, the Federal Rules of Civil Procedure do not automatically apply to such proceedings. Here, it was the court of appeals' order of reference that established the Fed-

noted, discovery under the federal rules was available in the proceedings before him, but petitioners failed to make use of it. Pet. App. 60.

Thus, the only real issue raised by petitioners' claim is whether the Special Master erred in accepting the Board's position that its witness statements and affidavits were not subject to pre-trial discovery and in denying petitioners' motion to compel production. That fact-bound issue does not warrant review by this Court. In any event, it is clear that the Special Master acted well within his authority in denying the motion to compel production.[7] Moreover, as the Special Master found, that ruling did not prejudice the Union's defense because, in accordance with the Board's administrative practice, "[a]fter direct examination of each Board witness the Union was presented a copy of the witnesses statement to the Board, if one was made, and given whatever time [it]

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eral Rules as governing the proceedings before the Special Master.

[7] The statements at issue were clearly prepared in contemplation of litigation and were entitled to protection against discovery as work-product within the meaning of Rule 26(b)(3). See *In re Grand Jury Investigation*, 599 F.2d 1224, 1231 (3d Cir. 1979); *Brock* v. *Frank V. Panzarino, Inc.*, 109 F.R.D. 157, 159 (E.D.N.Y. 1986) (regarding similar statements taken by agents of the Department of Labor investigating Fair Labor Standards Act violations). It is well established that such statements are exempt from discovery under Rule 26(b)(3) in the absence of a showing of substantial need and undue hardship. See *Hickman* v. *Taylor*, 329 U.S. 495, 508-511 (1947); *NLRB* v. *Trades Council*, 131 L.R.R.M. (BNA) 2022, 2024-2025 (3d Cir. 1989) (on contempt); *Alltmont* v. *United States*, 177 F.2d 971, 976 (3d Cir.), cert. denied, 339 U.S. 967 (1950); *NLRB* v. *Laborers, Local 1140*, 78 L.R.R.M. (BNA) 2635, 2637 (8th Cir. 1971) (on contempt).

needed to prepare for cross examination." Pet. App. 60.

2. Petitioners contend (Pet. 9) that, under *United Bhd. of Carpenters* v. *United States*, 330 U.S. 395, 403 (1947), and *United Mine Workers* v. *Gibbs*, 383 U.S. 715, 739 (1966), a union may not be held responsible for the illegal activities of its members unless there is clear proof that it "actually participated, gave prior authorization or ratified such acts after actual knowledge of their perpetration;" that is, that the union "participated actively or by knowing tolerance" in the misconduct. That standard, petitioners assert, was not met here.

Petitioners' reliance on those cases is misplaced, because they involved the standard for agency in Section 6 of the Norris-LaGuardia Act, 29 U.S.C. 106,[8] which is more stringent than the common law principles of agency which Congress made controlling for cases under the National Labor Relations Act.[9] See *Carbon Fuel Co.* v. *United Mine Workers*, 444 U.S. 212, 216-217 (1979); *United Mine Workers* v. *Gibbs*, 383 U.S. at 736 & n.24. Petitioners do not claim that they could not properly be held responsible

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[8] That Section provides that no union "shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

[9] Section 2(13) of the NLRA, 29 U.S.C. 152(13), provides: "In determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

for the illegal conduct of union members under the common law agency principles which govern liability under the NLRA. In any event, the Special Master's findings are sufficient to establish liability even under the more stringent Norris-LaGuardia test. Contrary to petitioners' contention (Pet. 10), the Special Master did not find the Union "strictly accountable for any failure in its efforts to maintain order," but rather found that there was a proven pattern of misconduct on picket lines that the Union had established and over which the Union exercised steady oversight. In those circumstances, the Special Master could infer that the Union had actual knowledge of the misconduct after the fact, which would establish liability under the "knowing tolerance" standard of *Gibbs*.

3. Petitioners argue (Pet. 10-12) that the Court should grant certiorari in this case to afford the Court an opportunity to clarify whether *International Union* v. *Bagwell*, 114 S. Ct. 2552 (1994), applies to a contempt proceeding at this stage, namely, one in which the court announces a prospective fine schedule to deter future contumacies, but does not actually assess any such fines. This argument fails because the particular concerns which led to the Court's establishment of constitutional protections for accused contemnors situated similarly to the contemnor in *Bagwell* are not present in this case.

Contempt generally comprises a three-stage process: (1) issuance of a court order; (2) disobedience of that court order, leading to a second court order finding the recalcitrant party in contempt, ordering that party to purge itself of its contempt, and establishing a specified prospective fine schedule or

other prospective sanction for failure to comply; and (3) exaction of the threatened fine or other coercive sanction if the purgation conditions are not fulfilled. *NLRB* v. *Blevins Popcorn Co.*, 659 F.2d 1173, 1184 (D.C. Cir. 1981); Owen Fiss, *Injunctions* 763-764 (1972).

Bagwell involved a third-stage contempt proceeding. There, a month after enjoining the union from conducting unlawful strike-related activities against certain mining companies, a Virginia trial court held a contempt hearing, fined the union for its disobedience, and announced that it would fine the union $100,000 for any future violent breach of the injunction and $20,000 for any nonviolent infraction. In seven subsequent contempt hearings, the court found the union in contempt for more than 400 separate violations of the injunction, many of them violent, and levied over $64 million in fines against the union. Approximately $12 million of the fines were to be paid to the companies, and the remaining roughly $52 million were to be paid to the Commonwealth and the two counties most heavily affected by the unlawful activity. While appeals from the contempt orders were pending, the union and the companies settled the underlying labor dispute, agreed to vacate the contempt fines, and jointly moved to dismiss the case. The court granted the motion to dismiss, dissolved the injunction, and vacated the $12 million in fines payable to the companies. Reiterating its belief that the remaining $52 million owed to the Commonwealth and the counties were coercive, civil fines, the trial court refused to vacate those fines, concluding that they were "payable in effect to the public." *Bagwell*, 114 S. Ct. at 2555-2556.

Acknowledging that the line between coercive civil contempt fines and criminal sanctions was difficult to define, the Court concluded that the fines challenged in *Bagwell* were criminal in nature. The Court explained:

> [T]he Virginia trial court levied contempt fines for widespread, ongoing, out-of-court violations of a complex injunction. In so doing, the court effectively policed petitioners' compliance with an entire code of conduct that the court itself had imposed. The union's contumacy lasted many months and spanned a substantial portion of the State. The fines assessed were serious, totalling over $52,000,000. Under such circumstances, disinterested factfinding and even-handed adjudication were essential, and petitioners were entitled to a criminal jury trial.

114 S. Ct. at 2562 (footnote omitted).

This case is distinguishable from *Bagwell*. First, it has gone no further than stage two of the contempt process. The court of appeals adjudicated petitioners in contempt and ordered that they take certain action in purgation. To forestall future violations, the court imposed a schedule of "prospective non-compliance fine[s]." Pet. App. 4. However, by providing that, in the event of future violations, the announced fines would be collected "subject to the requirements of due process," *ibid.*, the court has left open until that later stage of the contempt proceeding the question of what process is due. Petitioners thus will have an opportunity at that time—if the circumstances arise—to advance their contentions (Pet. 11-13) that the manda-

tory fine schedule is unduly harsh and that due process requires a trial by jury.[10]

Second, the *Bagwell* Court did not hold that prospective fines are inherently criminal in nature, or that they can never be enforced in a civil contempt proceeding. It merely "decline[d] to conclude that the mere fact that the sanctions were announced in advance rendered them coercive and civil as a matter of constitutional law." 114 S. Ct. at 2562. Although the Court went on to hold that the particular fines before it were criminal in nature, it did so because "[o]ther considerations convince [it] that the fines challenged here [were] criminal." *Ibid.* Among those considerations was a concern that the state court judge, who had issued the original injunction, had become incapable of disinterested fact-finding, because of the many roles he had been called upon to play in the proceedings, and that the fines, which totalled $52 million, were a serious contempt sanction that would ordinarily require a jury trial. See 114 S. Ct. at 2562 & n.5. Those factors are not present here. Indeed, no fines have, as yet, been assessed here, and

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[10] Petitioners' contention (Pet. 13) that the discovery feature of the court's purgation order is "unwarranted and unconstitutional" is also premature. That order provides that the Board "may obtain discovery" from the Union and others, "in the manner provided by the Federal Rules of Civil Procedure, upon any matter reasonably related to compliance with the judgment or this contempt adjudication." However, the order safeguards against Board abuse of its discovery authority by further providing that, "should a dispute arise between the parties respecting such discovery, upon the motion of either party, the Court shall appoint a special master, with such duties and powers as the Court shall specify, to supervise the discovery." Pet. App. 4.

petitioners, by conforming their future conduct to the requirements of law, are well positioned to ensure that none will.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 1996

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 93-3195

(NLRB #4-CB-6756, 4-CB-6753, 4-CB-6668 AND 4-CB-6527)

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

TEAMSTERS LOCAL 115, A/W INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,

-AND-

HAROLD FISHER, GERALD MCNAMARA,
AND JOCKO JOHNSON,
ADDITIONAL RESPONDENTS

[Filed September 30, 1993]

ORDER

Present: MANSMANN, ROTH and SEITZ,
Circuit Judges.

Motion by Petitioner for Order of Reference to a Special Master *and* form of order,

/s/ ANGELA PERRICONE
Angela Perricone
Deputy Clerk 597-3080

The foregoing Motion is granted.

By the Court,

/s/ Carol Los Mansmann
CAROL LOS MANSMANN
Circuit Judge

Dated: November 22, 1993

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 93-3195

NATIONAL LABOR RELATIONS BOARD
PETITIONER,

v.

TEAMSTERS LOCAL 115, A/W INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFURS,
WAREHOUSEMEN AND HELPERS OF AMERICA,
RESPONDENT,

-AND-

HAROLD FISHER, GERALD MCNAMARA,
AND JOCKO JOHNSON,
ADDITIONAL RESPONDENTS IN CONTEMPT.

[Filed September 27, 1993]

Present: MANSMANN, ROTH and SEITZ,
Circuit Judges.

ORDER

The national Labor Relations Board, having filed its petition praying for an adjudication in civil contempt and for other civil relief, the respondents

having filed answers thereto, and the Court being of the opinion that it is appropriate to designate a Special Master, it is

ORDERED that *Magistrate Judge Tullio Leomporra* be and hereby is designated Special Master to take testimony and hear evidence with respect to the issues raised by the pleadings, and the Clerk shall forthwith furnish the Master with a copy of this order; and it is

FURTHER ORDERED that the Master shall have authority, powers and duties as follows:

1. To hold such hearings as may be reasonably necessary to obtain oral or documentary evidence from witnesses made available by the parties, or under the compelling process of the Master. Such hearings may be held at such place or places as the Master may deem appropriate.

2. To engage a qualified reporter to take and transcribe the testimony adduced at such hearings. Pending further order of the Court with respect to taxation and assessment of costs, the reporter's charges, when duly billed for, shall be paid by the Board, in the first instance.

3. In accordance with the Federal Rules of Civil Procedure, to regulate all proceedings in the hearings before the Master and to do all acts and take all measures necessary or proper for the performance of the Master's duties under this order. The Master may conduct such pretrial proceedings as may be appropriate to consider the simplification of the issues herein, including the possibility of obtaining admissions of facts and documents, and take such other actions which may aid in the disposition of the reference, including the entertainment and disposition of motions pursuant to the rules regulating discovery,

motions for summary judgment, and motions to amend or supplement the pleading, in accordance with the pertinent provisions of the Federal Rules of Civil Procedure.

4. As soon after the conclusion of the hearing as practicable, the Master shall file with the Clerk of the Court the transcript of the proceedings and of the evidence, and the original exhibits, together with the Master's report thereon and recommendations as to findings of Fact and conclusions of law; a copy of said report and recommendations shall at the same time be served on the parties. The Master may require the parties to submit, prior to the filing of this report, proposed findings, objections to proposed findings, and briefs, and it is

FURTHER ORDERED that

5. Final assessment and allocations of all costs, fees, and expenses involved including counsel fees, are reserved for further order of the Court.

6. On filing with the Clerk of the Court of the Master's report and recommendation, the transcript of the proceedings and the original exhibits, the Clerk shall forthwith mail to all parties notice thereof. Within twenty (20) days after such notice, any party may file with this Court and serve on the other party written objections thereto.

BY THE COURT,

/s/ Carol Los Mansmann
CAROL LOS MANSMANN
Circuit Judge

DATED: November 22, 1993